Another question arises, whether the landlord can recover rent which accrues due after the Sheriff has secured the property; in England, the landlord could not do so, because the Courts have held that his right is restricted by the express words of a statutory enactment to rent due at the time of the seizure (*Hoskins* v. *Knight*, 1 Maule and Selwyn, p. 245); I hold, however, that Section 739 does not, either expressly or by necessary implication, restrict the landlord's right to rent due at the time of the seizure.

Finally, the question arises whether the rent is apportionable: I hold that under Section 3 of the Apportionment Ordinance, 1928, the rent is apportionable, and that the landlord may recover the rent due in respect of 28 days, that is, twenty-eight thirtieths of $260, or $242.66.

Order accordingly.

Solicitors for the landlord—*Wee Swee Teow & Co.*

Solicitors for the Plaintiff—*Mallal & Namazie.*

[ORIGINAL CIVIL JURISDICTION]

MILLS, J.

January, 8, 1934

AW BOON HAW v. CHEAH LOON GHEE.

[SINGAPORE CIVIL SUIT No. 888 of 1933]

Labuan Lands—Equitable mortgage of land in Labuan by deposit of title deeds.

An equitable mortgage of land in Labuan can be validly created by deposit of title deeds.

Motion for Judgment.

The Defendant was the owner of land and buildings in Labuan, holding the same under a Crown Lease for 999 years from the 1st July 1902 which lease was made in that year. In 1929 the Defendant was indebted to the Plaintiff in the sum of $10,000 for money lent, in respect of which he gave a Promissory Note to the Plaintiff dated 7th February, 1929. He also on the same day deposited with the Plaintiff the title deeds of his said lands in Labuan. The deposit was factual and verbal and was unaccompanied by any memo. of deposit. The Plaintiff sued the Defendant claiming a declaration that by virtue of the deposit of the title deeds the Plaintiff was an equitable mortgagee of the said lands in Labuan and for an account and for enforcement of the mortgage by sale or foreclosure and for costs and consequential relief. The Plaintiff duly filed his Statement of Claim but the Defendant filed no Defence whereupon the Plaintiff moved for Judgment in default of defence.

Laycock for the Plaintiff:—

Labuan was ceded to the Crown by the Sultan of Brunei on 18th December, 1846. The cession was confirmed by the treaty of 24th May, 1847. On cession the law of England as it then existed must be taken to be the governing law of Labuan (*Ong Cheng Neo* v. *Yeap Cheah Neo*, 6 L.R.P.C. at p. 393). The law of Labuan now is therefore the law of England as at the 18th December 1846 with such alterations therein as have since been made by any Imperial or local Statutes. For the present purpose there is no difference between the law of England as on the 18th December, 1846 and the 24th May, 1847.

It was settled law in England long before 1846 that an equitable mortgage could be created by deposit of title deeds [Lord Eldon in *Ex parte Wetherell*, 11 Vesey Jr. 398 at p. 401 (1805 A.D.)] As to the alterations made in law of England as applicable to Labuan since 1846, (i) Labuan Ordinance No. 7 of 1849 provided for registration of deeds only, not registration of title properly so called (ii) the Labuan Ordinance of the S.S. of 1907 continued in force Labuan Ordinance No. 7 of 1849 but excluded Labuan from operation of the S.S. Registration of Deeds Ordinance 1886 and the Conveyancing and Law of Property Ordinance 1886 and so did not alter the then existing position (iii) S.S. Ordinance No. 3 of 1911 continued this position (iv) S.S. Ordinonce No. 127 of the 1920 Revised Edition did in fact repeal Labuan Ordinance 7 of 1847 but incorporated all its relevant provisions and made no other material change in the law (v) the 1925 revision of the S.S. Ordinances made no change in this position.

So that at all material times and in all material questions the law of Labuan was in effect the law of England as at 1847 plus S.S. Ordinance No. 127 of the 1925 revision.

The S.S. Registration of Deeds Ordinance does not invalidate an equitable mortgage by deposit (*Ho Hong Bank Ltd.* v. *Teo Chin Chay*, 1929 S.S.L.R. 195 and cases there quoted). The same applies to the provisions for registration of deeds in Ordinance No. 127. Therefore equitable mortgage by deposit of title deeds can be validly created over land in Labuan.

C. da Silva for the Defendant.

MILLS, J. delivered a short oral Judgment for the Plaintiff for the relief prayed.

Judgment accordingly.

Solicitors for the Plaintiff—*Braddell Brothers.*

Solicitor for the Defendant—*Claude da Silva.*

THE END OF THE STRAITS SETTLEMENTS OFFICIAL REPORTS.